Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

* * * * * * * * *

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing for that property known as Lots 1 and 2 of Charles Grove located at the southwest corner of Tred Avon Road and St. Mary's Road in the Middleborough area of Essex. The Petition was filed by the owners of the property, Edward A. Klingenstein, Jr., and his wife, Irene E. Klingenstein. The Petition, as filed, seeks a special hearing to approve an existing accessory structure (shed) and four boats, three of which are less than 16 feet in length, and one in excess of 16 feet, with trailers to be located on a lot which is not improved with a principal dwelling. The relief sought is more particularly described on Petitioner's Exhibit 1.

Appearing on behalf of the Petition was Irene Klingenstein, who testified on behalf of herself and her husband who was unable to attend the hearing for health reasons. There were no Protestants.

Testimony indicated that the subject property, known as Lots 1 and 2 of Charles Grove in the Middleborough area of Essex, is located at the corner of Tred Avon Road and St. Mary's Road and consists of a combined area of 0.23 acres zoned D.R. 5.5. Said property is located within the Chesapeake Bay Critical Areas near Middle River. There are no improvements on the property but for an accessory shed and four boats which are being stored on the property. The Petitioners filed the instant Petition receipt of a zoning violation notice from the Zoning Administration and Development Management (ZALM) office as to the use of the property which is not improved with a principal dwelling. Mrs. Klingenstein testified that she has lived across the street from the subject property for the past 30 years and that her family has stored their boats on Lot 2 of the subject site for the past 16 years. Testimony indicated that the Petitioners purchased the property in 1988 from the previous owner, Grace Willett, who allowed the Petitioners to store their boats on her property prior to their ownership. Testimony indicated that the Petitioners continued to store their boats on the property after their purchase of same in 1988. In addition, the Petitioners built a wooden shed on the property in 1988 to store lawn and garden tools used to maintain the property. Testimony revealed that three of the boats belong to the Petitioners' sons and that the Petitioners own the fourth boat which is a 16-foot Viking and is situated on a trailer. Of the remaining three boats, one is 16 feet in length, one is 19 feet and the other is 24 feet long.

The Petitioners, who were unrepresented by Counsel and filed the Petition without assistance, are requesting permission to continue using the property as they have for the past 16 years. As previously noted, the Petitioners have stored their boats on Lot 2 of the subject property for the past 16 years and have owned and maintained the property for the past 5 years. To deny their use of the property as requested would result in unreasonable hardship and practical difficulty for the Petitioners.

Section 415.A.3.B of the B.C.Z.R. applies to the special hearing requested for the storage of the four boats. Inasmuch as the lots on which the boats are stored are not improved with a residence, the Petitioners are unable to comply with Sections 415.A.1.A, B or C. Therefore, Section

- 2-

415.A.3.B, which provides an exception to those regulations, is applicable. To require the Klingensteins to comply with Sections 415.A.1 and 2 would create an undue hardship upon them. Therefore, the relief requested pursuant to the Petition for Special Hearing shall be approved and the modified storage plan submitted by the Petitioner shall be approved pursuant to Section 415.A.3.B. Mrs. Klingenstein and her family shall be permitted to continue to store the four (4) boats in question on the subject property just as they have done for the past 16 years. There is ample space on the subject property for the storage of these boats and since this is a waterfront community, many boats are stored on land. The Petitioners submitted several photographs evidencing the storage of boats throughout the neighborhood.

The Petitioners also seek approval to keep the accessory shed on the subject property. As previously noted, the shed has existed on the property for the past 5 years. Mrs. Klingenstein testified that she stores lawn and garden tools and equipment used to maintain the property in the shed. Testimony indicated that her son intends to relocate the shed onto his property upon completion of his new home but will be unable to do so for a few more years. Mrs. Klingenstein would like to keep the shed in its present location until such time as her son is able to relocate it to his property.

The question arises as to whether Mrs. Klingenstein is permitted to maintain a shed on an unimproved parcel of land. The Petition as filed seeks permission to keep an accessory structure (shed) on the subject property. This shed does not satisfy the technical definition of an accessory structure. While it is clear that it is a structure, it is not accessory to a principal building or other structure on the property. However,

- 3-

in the opinion of this Deputy Zoning Commissioner, the relief requested should be granted and the Petitioners should be permitted to keep the subject shed for the purpose described herein.

I believe that a person who owns vacant land should be permitted to erect a structure thereon to house the tools and implements necessary to maintain that land in an aesthetically pleasing manner. An individual should be permitted to store on their property lawn mowers, rakes, garden hoses, or whatever tools necessary to properly care for and maintain their property and they should be permitted to store same within a secure struc ture on the property. The literal interpretation and application of the B.C.Z.R. in the instant case would, in my opinion, work an extreme hardship on the Klingensteins. Therefore, the Petitioners shall be permitted to keep the shed on the subject property for the use described above and

As noted above, this property is located within the Chesapeake Bay Critical Areas and as such, is subject to compliance with any recommendations made by the Department of Environmental Protection and Resource Management (DEPRM) as to Critical Areas legislation. By comments dated November 10, 1993, DEPRM has advised this Office that the use proposed does not constitute "development activity" and as such, compliance with Critical Areas legislation is not applicable.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

> 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

> > - 4-

2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and

3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28

It is clear from the testimony that if the variance is granted, such use, as proposed, will not be contrary to the spirit of the B.C.Z.R. and will not result in any injury to the public good.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of this variance request and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variance requested will not cause any injury to the public health, safety or general welfare. Further, the granting of the Petitioner's request is in strict harmony with the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variance requested should be granted.

Baltimore County this 13 day of December, 1993 that the Petition for Special Hearing to approve an existing accessory structure (shed) and four

- 5-

(4) boats, one 24-foot, one 19-foot and two 16 feet in length, with trailers to be located on the subject property which is not improved with a principal dwelling, in accordance with Petitioner's Exhibit 1. be and is hereby GRANTED, subject to the following restrictions:

> 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

> 2) The relief granted herein is limited to the existing 16' x 16' shed and four (4) boats and trailers on the subject property. Specifically, the relief granted herein is not transferrable. Therefore, should the Petitioners sell, lease or transfer this property, the relief granted shall terminate and the new owners shall only be permitted to store one (1) recreational vehicle on the subject property.

3) In the event the Petitioners should sell any of their boats or find other storage for any of the boats currently stored on the site, then the variance granted for that particular boat shall cease and terminate.

4) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

> Deputy Zoning Commissioner for Baltimore County

ORDER RECEIVED FOR F

Baltimore County Government Zoning Commissioner Office of Planning and Zoning

Suite 113 Courthouse 400 Washington Avenue Towson, MD 21204

(410) 887-4386

December 13: 1993

Mr. & Mrs. Edward A. Klingenstein, Jr. 2108 Tred Avon Road Baltimore, Maryland 21221

RE: PETITION FOR SPECIAL HEARING SW/Corner Tred Avon Road and St. Mary's Road (Lots 1 and 2 of Charles Grove in Middleborough) 15th Election District - 5th Councilmanic District Edward A. Klingenstein, Jr., et ux - Petitioners Case No. 94-165-SPH

Dear Mr. & Mrs. Klingenstein:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

TIMOTHY M. KOTROCO Deputy Soning Commissioner for Beltimore County

cc: Chesepseks Bay Critical Areas Commission 45 Calvert Street, 2nd Floor, Annapolis, Md. 21401

People's Counsel

for the property located at Tred Avon Rd. And ST. Hary Rd. which is greently smed DR 5.5

This Petition shall be filed with the Office of Zoning Administration & Sevelopment Management.
The undersigned, legal ewner(s) of the property elizate in Baltimore County and which is described in the description and plat alleohed hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County. to datermine whether or not the Zening Commissioner should approve

> To permit an accessory structure (A existing shed) and recreational vehical storage. 3 boats less than left in length, and I boat in excess of left with trailers to be located on A lot not improved with a principal dwelling.

Property is to be posted and advertised as prescribed i, or wa, agree to pay expenses of above Special Hearing advertising to be bound by the zoning regulations and restrictions of Sathmo	management of the contract of
	Who do extensity districts and affirm, under the principes of people, that then one the legal contests of the property which is the output of the Police.
Contract Purchasect Avenue	Light Consults:

Each Purch seach, drives	Lagas Gensugg:
or Plan Name	Rdward A. Klingenetein Jr
	Edward A. Klingwelin G.
	Trene E. Klingenstein
Epochs .	Seese C Hagenste
ty to Fellinson	2108 Tred Avon Rd (410) 687-7
yra (villa)	Baltimore, Maryland 2122

- 6-

94-165-5PH

Zoning Descrption Lot 1 CD 5 ED 15

10-13-1993

Beging at a point at the intersection of the East side of Tred Avon Rd and the South side of St Marys Rd. Being know as lot I in the subdvison of Middleborough plat book 7 folio 72 being 0.23 Acres.

Zoning Description Lot 2 CD 5 ED 15

Same as lot one but 99.51ft South East of intersection of Tred Aven Rd and St Marys Rd South West' as described

> CERTIFICATE OF POSTING ZOHING DEPARTMENT OF BALTIMORE COUNTY Towner, Meryland

District 15 th	Date of Posting 10/21/93
Posted for: 52-44/ Hearing Petitioner: Fund & From (
Location of property: 10/1/1/1/1/1/1/1/1/1/1/1/1/1/1/1/1/1/1/	on & ST. Mons Res
Location of Signs: Touting Tout way	on proper Ty being 20 ved
Remarks: Posted by Signature	Date of return: 10/29/93

Baltimore County Government Office of Zoning Administration and Development Management



111 West Chesapeake Avenue Towson, MD 21204 OCTOBER 22, 1993

(410) 887-3353

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204

Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 94-165-SPH (Item 164) Lot 1, Middleborough SWC Tred Avon and St. Marys Road 15th Election District - 5th Councilmanic Petitioner(s): Edward A. Klingenstein, Jr. and Irene E. Klingenstein HEARING: FRIDAY, NOVEMBER 19, 1993 at 10:00 a.m. in Rm. 106, County Office Bulding.

Special Hearing to permit an accessory structure (existing shed) and recreational vehicle storage (3 boats less than 16 feet in length and 1 boat in excess of 16 feet with trailers) to be located on a lot not improved with a principal dwelling.

cc: Edward and Irene Klingenstein

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE. (3) FOR IMPORMATION CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Case: #94-165-SPH
ditam 164)
Lot 1, Middleberough
SWC Tred Avon and St.
Marye Road
16th Blection District
Sth Councilmanic
Politicants:
Beward A. Kilingenstein, Jr.
and Irene E. Kilingenstein
Hearing: Priday,
Nevember 19, 1999 at
16:00 a.m. in Fim. 108,
County Office Building.

Special Hearing to permit an accessory structure (existing shed) and recreational vehicle lettings (3 beats less than 16 feet in length and 1 beat in excess of 16 feet with trailers) to be tocated on a tet not improved with a principal dwelling.

CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published

in Towson, Baltimore County, Md., once in each of ____ successive weeks, the first publication appearing on $\frac{1028}{28}$. 19 $\frac{93}{28}$

THE JEFFERSONIAN.

LEGAL AD. - TOWSON

Zoning Administration & **Development Management** 111 West Chesapeake Avenue

OWNER: KUNK-ENSTEIN.

LOC: SW CORNER TRED AVON AND

ST. MARYS RD.

92602#01546TCHRC Please Make Checks Payeble To: Baltimore County

Baltimore County Government Office of Zoning Administration and Development Management

111 West Chesapeake Avenue Towson, MD 21204

(410) 887-3353

November 9, 1993

Mr. and Mrs. Edward A. Klingenstein, Jr. 2108 Tred Avon Road Baltimore, Maryland 21221

> RE: Case No. 94-165-SPH, Item No. 164 Petitioner: Edward A. Klingenstein, Jr., et ux Petition for Special Hearing

Dear Mr. and Mrs. Klingenstein:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., zoning commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on October 4, 1993, and a hearing was scheduled accordingly.

The following comments are related <u>only to the filing of future</u> <u>zoning petitions</u> and are aimed at expediting the petition filing process

1. The director of Zoning Administration and Development Menagement has instituted a system whereby seasoned soning attorneys who feel that they are capable of filing petitions that comply with all aspects of the soning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by soning personnel.

Baltimore County Government Office of Zoning Administration and Development Management



111 West Chesapeake Avenue Towson MD 21201

(410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

1) Posting fees will be accessed and paid to this office at the time of filing.

2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

Item No.:_	4
Petitioner	Sure & Throngenster
Localion:	2108 Took Block Aid Faith 1/1de 21221
	VARD ADVERTISING BILL TO:
	· ·
ΝΛΜΕ:	The state of the s

(Revised 04/09/93)

TO: PUTURENT PUBLISHING COMPANY October 28, 1993 Imme - Jeffersonian

Please formed billing to:

Edward and Irene Elingenstein, Jr. 2108 Tred Avon Road Baltimore, Maryland 21221 410-687-7515

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Requistions of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 M. Chemaphake Avenue in Towner, Maryland 21894

Room 118, Old Courthouse, 400 Weshington Avenue, Transco, Maryland 21,804 am follows:

CASE MURBER: 94-165-SPH (Item 164) Lot 1, Middleborough SMC Tred Avon and St. Marys Road 15th Election District - 5th Councilmanic Petitioner(x): Edward A. Klingenstein, Jr. and Irene E. Klingenstein HEARING: FRIDAY, HOVERBER 19, 1993 at 10:00 a.m. in No. 106, County Office Building.

Special Hearing to permit an accremory structure (existing shed) and recreational vehicle storage () boats less than 16 feet in length and 1 boat in excess of 16 feet with trailers) to be located on a lot not improved with a principal desiling.

LAMBENCE E. SCHEIDT ZOHING COMMISSIONER FOR BALTIMORE COUNTY

HOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMENDATIONS PLEASE CALL 887-3353. (2) FOR IMPOSHATION CONCERING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

BALTIMORE COUNTY, MARYLAND

Klingenstein Property

show the location of edjacent houses and the existing shed.

Due to the lack of information provided, staff is unable to provide substantive

comments. The plat accompanying the special hearing request should be amended to

INTER-OFFICE CORRESPONDENCE

Maryland Department of Transportation State Highway Administration

O. James Lighthizer Hai Kassoff

10-26-93

Re: BACTO, CO, Item No.: \$ 164 (JLL)

Development Management County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204

Ms. Charlotte Minton

Zoning Administration and

Dear Ms. Minton:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

SUMMARY OF RECOMMENDATIONS:

TO: Arnold Jablon, Director

DATE: October 25, 1993

INFORMATION:

Item Number:

Petitioner:

Zoning Administration &

Development Management

SUBJECT: Klingenstein Property

FROM: Pat Keller, Deputy Director

Office of Planning and Zoning

Pa. 1

Printed with Soyboan Ini on Recycled Paper

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

November 4, 1993

): Mr. Arnold Jablon, Director Zoning Administration and Development Management

FROM: J. Lawrence Pilson

Development Coordinator, DEPRM

SUBJECT: Zoning Item #164 - Klingenstein
Tred Avon Road & St. Mary's Road
Zoning Advisory Committee Meeting of October 25, 1993

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine whether the proposed development is in compliance with the Chesapeake Bay Critical Area regulations. The applicant may contact the Environmental Impact Review Section at 887-3980 for details.

JLP:KK:sp KLINGEN/DEPRM/TXTSBP Baltimore County Government
Department of Permits and Licenses

OBER 25, 1993

(410) 887-3610

111 West Chesapeake Avenue
Towson, MD 21204
Arnold Jablon

Director
Zoning Administration and
Development Nanagement
Baltimore County Office Building
Towson, MD 21204

ZONING AGENDA: MEETING OF OCTOBER 25, 1993

Owner: John L. Gross, Sr. and Helen Gross Location: #926 Wampler Road Item No.: 158 (JRF/JCM)

Owner: Joseph E. Chenowith & Gloria J. Chenowith Location: #3731 Grave Run Road Item No.: 162 (RT)

Owner: Cedarside Farm Joint Venture Location: Lot 39, Cedarside Farm Item No.: 163 (RT)

Owner: Edward A. Klingenstein, Jr. & Trene E. Klingenstein Location: Lot 1, Middleborough Item No.: 164 (JLL)

Owner: Thomas J. Lasek Location: #2240 Vailthorn Road Item No.: * 165 (JRF)

Owner: Michael E. Krompholz & Brigita M. Krompholz Location: #1315 Denby Road
Item No.: 166 (JJS)

Owner: Anthony Scott Braglio, Sr. Location: #5310 Dogwood Road Item No.: +167 (JRA)

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time.

Approved Lobe of School of Keles Fire Prevention Bureau

Printed with Soybean Ink on Recycled Paper

BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

Mr. Arnold E. Jablon, Director DATE: November 10, 1993
Office of Zoning Administration
and Development Management

FROM: J. James Dieter

, s

SUBJECT: Petition for Zoning Variance - Item 164 Klingenstein Property Chesapeake Bay Critical Area Findings NOV 1.2 1993

 $n/n/4\beta$

SITE LOCATION

The subject property is located at Tred Avon and St. Mary Roads. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area (LDA).

APPLICANT'S NAME Edward and Irene Klingenstein, Jr.

APPLICANT PROPOSAL

The applicant has requested a variance from the Baltimore County Zoning Regulations to allow the storage of 4 recreational vehicles and an accessory structure (existing shed) on a lot not improved with a principal dwelling.

GOALS OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM

In accordance with the Chesapeake Bay Critical Area Program, all

project approvals shall be based on a finding which assures that proposed

- projects are consistent with the following goals of the Critical Area Law:

 1. "Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands:
- 2. Conserve fish, wildlife and plant habitat; and
- 3. Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts" <COMAR 14.15.10.01.0>.

Mr. Arnold E. Jablon November 10, 1993

DEFINITIONS

"Development Activities" means the construction or substantial alteration of residential, commercial, industrial, or transportation facilities or structures COMAR 14.16.01.01 A(21)2.

Finding: The storage of 4 recreational vehicles and a shed on the property is not considered a "Development Astivity" as defined above Therefore, this project shall not need a Chesapeake Bay Critical Area

CONCLUSION

This project proposal does not require a Chesapeake Bay Critical Area Findings for the reasons stated above:

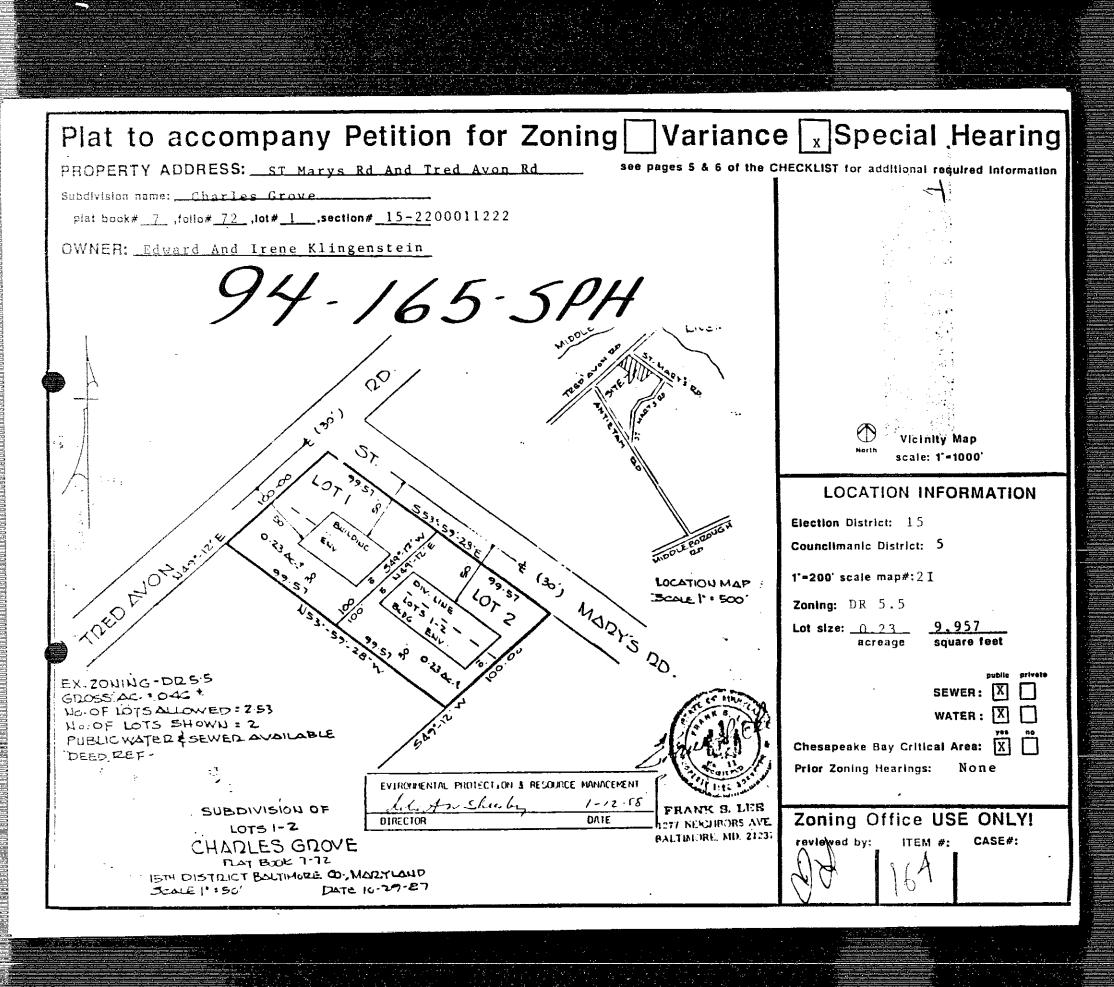
If there are any questions, please contact Ms. Patrikia M. Farr at 887~3980.

J. James Dieter, Director
Department of Environmental Protection
and Redounce Management

JJD:KDK:tmm

cc: Mr. and Mrs. Edward Klingenstein, Jr. 2108 Tred Avon Road Baltimore, Maryland 21221

KLINGEN/DEPRM/WQCBCA





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